

**§ 324.3 Loss amortization and re-appraisal.**

(a) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors or principal shareholders, a bank that has been accepted under this part may, in the manner described below, amortize on its Reports of Condition and Income:

(1) Any loss on any qualified agricultural loan that the bank would be required to reflect in its annual financial statements for any year between and including 1984 to 1991; and

(2) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 to 1991 resulting from a reappraisal or sale of agriculturally related other property.

(b) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loss was or is charged off so as to be fully amortized not later than December 31, 1998.

[52 FR 41968, Nov. 2, 1987, as amended at 53 FR 22134, June 14, 1988]

**§ 324.4 Accounting for amortization.**

Any bank which is permitted to amortize losses in accordance with § 324.3 may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account shall be included in Tier 2 capital under 12 CFR part 325.

[52 FR 41968, Nov. 2, 1987, as amended at 56 FR 23011, May 20, 1991]

**§ 324.5 Eligibility.**

A proposal submitted in accord with § 324.7 shall be accepted, subject to the conditions described in § 324.6, if the Accepting Official finds:

(a) The proposing bank is an agricultural bank;

(b) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and agriculturally related other property; and

(d) The proposing bank has submitted a capital plan approved by the Corporation or the Accepting Official that will restore its capital to an acceptable level.

[52 FR 41968, Nov. 2, 1987, as amended at 53 FR 22134, June 14, 1988]

**§ 324.6 Conditions on acceptance.**

All acceptances of proposals shall be subject to the following conditions:

(a) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(b) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(c) The financial condition of the bank shall not deteriorate to the point where it is no longer a viable, fundamentally sound institution;

(d) The bank shall agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain a percentage of agricultural loans and agriculturally related other property to total loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(e) The bank shall agree to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

[52 FR 41968, Nov. 2, 1987, as amended at 53 FR 22134, June 14, 1988]

**§ 324.7 Submission of proposals.**

(a) A bank wishing to amortize losses on qualified agricultural loans or agriculturally related other property shall submit a proposal to the Division of Supervision regional director of the region in which the bank is located.

(b) The proposal shall contain the following information:

- (1) Name and address of the bank;
- (2) Information establishing that the bank is located in an area, the economy of which is dependent on agriculture such as a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that the bank is located in an area dependent on agriculture;
- (3) A copy of the bank's most recent Reports of Condition and Income;
- (4) If the Report of Condition fails to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;
- (5) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period (the plan should provide for a realistic improvement in the bank's capital, over the course of the bank's amortization period, from earnings retention, capital injections, or other sources and include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest, and payments for services or products furnished by affiliated companies or companies which are related interests of insiders);
- (6) A list of the loans and agriculturally related other property upon which the bank proposes to defer loss including, for each such loan or property, the following information:
  - (i) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;
  - (ii) The date on which the loss was declared;
  - (iii) The basis upon which the loss resulted from a qualified agricultural loan;
- (7) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;
- (8) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

- (9) Such other information as the Accepting Official may require.

(Approved by the Office of Management and Budget under control number 3064-0091)

[52 FR 41968, Nov. 2, 1987; 52 FR 43190, Nov. 10, 1987, as amended at 53 FR 22134, June 14, 1988; 60 FR 31384, June 15, 1995]

#### **§ 324.8 Revocation of eligibility.**

If the bank fails to continue to meet eligibility requirements or to comply with the capital plan or any condition of an acceptance, the Accepting Official may notify the bank of the intent to revoke authorization for deferral of losses. The bank will have 60 days from receipt of the notice in which it may submit written objections and reasons why authorization should continue. If no written objections are received within 60 days, the revocation shall be final. If the bank submits objections, they will be considered and a final decision, or a request for additional information, shall be made within the next 30 days.

#### **§ 324.9 Other administrative actions.**

Acceptance of a bank for loss amortization does not foreclose any administrative action against the bank that the Corporation may deem appropriate.

### **PART 325—CAPITAL MAINTENANCE**

#### **Subpart A—Minimum Capital Requirements**

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- 325.1 Scope.
  - 325.2 Definitions.
  - 325.3 Minimum leverage capital requirement.
  - 325.4 Inadequate capital as an unsafe or unsound practice or condition.
  - 325.5 Miscellaneous.
  - 325.6 Issuance of directives.

#### **Subpart B—Prompt Corrective Action**

- 325.101 Authority, purpose, scope, other supervisory authority, and disclosure of capital categories.
- 325.102 Notice of capital category.
- 325.103 Capital measures and capital category definitions.
- 325.104 Capital restoration plans.
- 325.105 Mandatory and discretionary supervisory actions under section 38.

APPENDIX A TO PART 325—STATEMENT OF POLICY ON RISK-BASED CAPITAL